

**REMARKS**

Claims 1-4 and 6-12 are pending in this application.

The Examiner rejected Claims 1, 2, 4, 6, 8, 9, and 10 under 35 U.S.C. 102(b) as being allegedly anticipated by Japanese Pat. Appl. No. 1-139515 A.

The Examiner rejected Claims 1-4 and 6-12 under 35 U.S.C. 103(a) as being allegedly unpatentable over US Pat. No. 5,417,973 in view of US Pat. No. 4,965,070.

The Examiner rejected Claims 1-3, 7, 11 and 12 rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Japanese Pat. Appl. No. 1-139515 A in view of US Pat. No. 4,965,070.

Applicant respectfully traverses the Examiner's rejections under 35 U.S.C. 102(b) and 103(a) with the following arguments.

**35 U.S.C. 102(b)**

The Examiner rejected Claims 1, 2, 4, 6, 8, 9, and 10 under 35 U.S.C. 102(b) as being allegedly anticipated by Japanese Pat. Appl. No. 1-139515 A. Applicant respectfully traverses the Examiner's rejection because JP Application No. 1-139515 A does not teach each and every element of Applicant's claimed invention. As to the claim element **wherein the substrate is selected from the group consisting of plants** of Claim 1, the Examiner states "the reference JP '515 teaches applying a composition containing an onion powder to garbage to repel animals." See the Final Office Action, page 2, paragraph 6. Applicant respectfully submits the Examiner's argument fails because the Examiner does not address the difference between **plants** and **garbage**. Applicant respectfully submits the accepted definition of **plants** is: "1) a young tree, shrub, or herb, ready to put into other soil for growth to maturity; and 2) any living thing that

cannot move voluntarily, has no sense organs, and generally makes its own food by photosynthesis; vegetable **organism**, as distinguished from an animal organism; any tree, shrub, herb, etc." (emphasis added). See the enclosed Webster's New World Dictionary of the American Language, The World Publishing Company, College Edition, New York, p. 1118 (1966). In contrast, the accepted definition of **garbage** is: "1) waste parts of food, as from a market or kitchen; animal or vegetable **matter** that is thrown away; and 2) any worthless or offensive **matter**" (emphasis added). See the enclosed Webster's New World Dictionary of the American Language, The World Publishing Company, College Edition, New York, p. 596 (1966). Applicant respectfully contends that the Examiner's argument that JP '515 "teaches applying a composition containing an onion powder to **garbage** to repel animals fails to anticipate Applicant's Claim 1, as to the claim element **wherein the substrate is selected from the group consisting of plants** of Claim 1, because JP '515 teaches repelling from **garbage** and Applicant's Claim 1 claims repelling from **plants**.

In light of the foregoing discussion, Applicant respectfully contends Claims 1, 2, 4, 6, 8, 9, and 10 are not anticipated under 35 U.S.C. 102(b) by Japanese Pat. Appl. No. 1-139515 A because JP '515 teaches repelling from **garbage** and Applicant's Claim 1 claims repelling from **plants**.

35 U.S.C. 103(a)

The Examiner rejected Claims 1-4 and 6-12 under 35 U.S.C. 103(a) as being allegedly unpatentable over US Pat. No. 5,417,973 in view of US Pat. No. 4,965,070. Applicant respectfully traverses the Examiner's rejection of Claims 1-4 and 6-12 under 35 U.S.C. 103(a) because there is no motivation for one reasonably skilled in the art to look to '070 to modify U.S.

Patent No. 5,417,973 ('973) because '973 teaches "repelling pests (e.g. insects and birds) from an animal carcass" (emphasis added). See '973, Abstract. In contrast, '070 teaches applying a repellent "for warding off deer from a plant" (emphasis added). See '070, Abstract. As to the claim elements **plants** and **living animals** of Claim 1, the Examiner states "both references are concerned with the same problem, repelling animals from food sources." See the Final Office Action, page 3, paragraph 7. In response, Applicant respectfully submits the Examiner's argument fails because the Examiner does not address the difference between treatment of the **dead animal carcass** taught by '973, and treatment of **plants** taught by '070. Applicant respectfully submits '973 does not teach or suggest using its composition comprising "salt" and "light cooking oil" on **plants** which is the subject matter of '070. See '973, Column 2, lines 6-13, stating "the salt helps to preserve the animal." Nowhere does '973 teach a composition for treatment of **plants**. As to the claim elements **plants** and **living animals** of Claim 1, the Examiner states "Since both references teach ingredients that are known to be used as an animal repellent, it would be obvious to combine the ingredients together. See the Final Office Action, page 3, paragraph 7. Applicant respectfully disagrees, contending that the Examiner ignores that '973 in view of '070 do not teach or suggest that the combination of ingredients taught by '973 and '070 is for treating a **plant** since '973 teaches treating a **dead carcass** with the ingredients of '973.

In light of the foregoing discussion, Applicant respectfully contends that Claims 1-4 and 6-12 are patentable under 35 U.S.C. 103(a) over '973 in view of '070 because combination of '973 in view of '070 is improper because there is no motivation for one skilled in the art to look to '070 to modify '973.

The Examiner rejected Claims 1-3, 7, 11 and 12 under 35 U.S.C. 103(a) as being allegedly unpatentable over JP Pat. Application No. 1-139515 A in view of U.S. Patent No. 4,965,070 ('070). Applicant respectfully traverses the Examiner's rejection of Claims 1-3, 7, 11 and 12 because one skilled in the art would not be motivated to combine JP '515 in view of U.S. '070 for the same reason Applicant traversed the Examiner's rejection of Claims 1-4 and 6-12 under 35 U.S.C. 103(a) *supra*. JP '515 teaches a repellent so that when applied to garbage, "**the garbage is not rummaged or scratched by dogs, cats and birds**" (emphasis added). See JP Pat. Application No. 1-139515 A, Abstract and Use/advantage. Applicant respectfully asserts that one skilled in the art would not look to '070 to modify JP Pat. Application No. 1-139515 A in order to use the combination of JP Pat. Application No. 1-139515 A and '070 to establish a *prima facie* case of obviousness under 35 U.S.C. 103(a) because JP Pat. Application No. 1-139515 A teaches a repellent so that when applied to the garbage "**the garbage is not rummaged or scratched by dogs, cats and birds**" (emphasis added). In contrast, U.S. Pat. No. 4,965,070 ('070) teaches applying a repellent "**for warding off deer from a plant**" (emphasis added). See '070, Abstract. As to the claim elements **plants and living animals** of Claim 1, the Examiner states "both references are concerned with the same problem, repelling animals from food sources." See the Final Office Action, page 3, paragraph 8. In response, Applicant respectfully submits the Examiner's argument fails because the Examiner does not address the difference between treatment of **garbage** taught by JP '515, and treatment of **plants** taught by '070. As to the claim elements **plants and living animals** of Claim 1, the Examiner states "A person of ordinary skill in the art would reasonably expect that a combination of the ingredients would serve to repel animals from food sources." See the Final Office Action, page 3, paragraph 8. In response,

Applicant respectfully disagrees, contending that the Examiner ignores that JP '515 in view of '070 do not teach or suggest that the combination of ingredients taught by JP '515 and '070 is for treating a plant since JP '515 teaches treating garbage with the ingredients of JP '515.

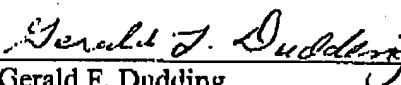
In light of the foregoing discussion, Applicant respectfully contends that Claims 1-3, 7, 11 and 12 are patentable under 35 U.S.C. 103(a) over JP Pat. Application No. 1-139515 A in view of U.S. Patent No. 4,965,070 ('070) because JP Pat. Application No. 1-139515 A in view of '070 is an improper combination, and the rejection of Claim 1 under 35 U.S.C. 103(a) should be withdrawn.

Applicant respectfully contends that Claims 1-4 and 6-12 are in condition for allowance under 35 U.S.C. 102(b) and 103 (a) because none of the prior art cited by the Examiner teaches or suggests each and every feature of independent Claim 1.

**CONCLUSION**

In summary, based on the preceding arguments, Applicant respectfully submits that all independent claims and dependent claims meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicant invites the Examiner to contact Applicant's representative at the telephone number listed below.

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**CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)**Applicant(s): Ruth Lipman

Docket No.

LIPM-3298

Serial No.

10/035,305

Filing Date

11/09/01

Examiner

Coe, Susan D.

Group Art Unit

1654

Invention: Apparatus, Method and Composition for Repelling Animals**FAX RECEIVED**

JUN 23 2003

GROUP 1600

I hereby certify that this Amendment (10 pages)*(Identify type of correspondence)*is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No. (703) 872-9306)on June 23, 2003*(Date)*Lynn A. Shanno*(Typed or Printed Name of Person Signing Certificate)**(Signature)*

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